North Canal Road and 63 Japan Street shall not be charged to the income of the residuary estate, but shall be paid for out of capital.

(3) The legal expenses necessarily incurred by the trustees in the course of the general administration of the estate shall be charged to the income of the residuary estate.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.A.

January 18, 1940.

IN THE ESTATE OF SEVATHA VAPPOO MARICAR OTHERWISE CALLED KAVENA SAYNA SAVATHA VAPPOO MARICAR DECEASED.

[SINGAPORE PROBATE No. 112 of 1938]

General pecuniary legacy—whether charged on the whole property or only on property not specifically bequeathed—residuary legatees—whether devise specific.

A testator directed that the executor of his will shall deduct from his inheritance Rs. 5,000/- for the purchase of a house and land in Nagour for the benefit of a legatee. The testator appointed as his residuary legatees, 3 nephews and devised to them his share in certain immoveable property in Singapore. It was contended that the devise of immoveable property was a specfic devise and accordingly the pecuniary legacy was not charged upon it.

Held, upon the wording of this will that the mere fact that a testator had enumerated some specific things in a gift of residue did not make the gift of those things specific and that by the use of the word "consequently" preceding the so-called specific gift and succeeding the residuary gift the testator had indicated that he intended the residuary legatees to receive the gift in their character of residuary legatees.

Cases referred to:—

(1) *Gainsford v. Dunn*, L.R. 17 Eq. at p. 408.

(2) *Greville v. Brown*, 7 H.L.C. p. 689.

(3) *Higgins v. Dawson*, (1902) A.C. at p. 12.

ORIGINATING SUMMONS.

John Laycock for Administrator.

S. C. Goho for Shaik Abdoolcader Maricar.

M. J. Namazie for Pattoumalle.

Cur. Adv. Vult.

Terrell, J.A.—The testator Sevatha Vappoo Maricar died on the 31st December, 1930, possessed of certain property in India and a two-fifth interest in certain houses in Victoria Street, Singapore, which were bequeathed to him by the will of Hamidunachial. The applicant is the administrator with will annexed of the Singapore estate. The will was executed in Karikal in French India and a translation into French was made by a notary in Karikal. This document was translated into English by the French Consulate in Singapore, and a copy of the translation into English forms part of the grant of Letters of Administration by this Court and is the only document which the Court can look at for the purpose of construing the will.

The material parts of the will are as follows:—

> "I have no posterity; my executor, Goulamougaidinesaib, son of Vanasaibmaricar, Chulia by caste, landowner, fifty-four years old staying at Grand'Aldee, shall deduct from my inheritance a sum of five thousand rupees; with that sum of money he shall buy a house in Nagour and a piece of ground to the name and for the profit of Pattoummalle, daughter of Adamsaib, Chulia by caste, without profession, staying in Nagour and who takes care of me; the purchase to the name of Pattoummalle must be done in one year and she shall possess the estate and dispose of it in full ownership with faculty of giving and alienating;
>
> I choose as my residuary legatees my nephews: (1) Checkabdoulcadmaricar (2) Mougamadalimaricar (3) Issoupasaibmaricar, three of them sons of my eldest brother, Mougamadoucossemaricar; consequently, my said legatees shall have my part on shops No. 102, 103, 104, 105, 106, situated in Singapore, Victoria Street, and on the house situated in Karikal, ancient Tranquebar Street, No. 101; and they shall also have the land called "Goulousambinyammallemaney", as well as all my wealth, rights and species; the said Pattoumalle shall have the ownership of all furniture and utensils existing in my house, which the said Pattoumalle and myself occupy in Nagour; on the twenty-second of every lunar month Pattoumalle shall recite prayers in honour of Zabarsadikandavar;"

The short point at issue is whether the gift of 5,000 rupees is charged on the whole estate or whether it is charged only on any property of the testator which may not have been specifically bequeathed or devised.

It is a golden rule that an instrument should be construed according to the natural meaning which the words bear in the instrument in which you find them (*per* Lord Davey in *Higgins v. Dawson*[3]). To my mind the words of the instrument are perfectly plain. The executor is directed to deduct from "my inheritance", (which I take to mean nothing more than the

'property passing on my death'), a sum of 5,000 rupees. There follow directions as to the disposal of this sum. Then the testator says "I choose as my residuary legatees my nephews etc." A 'residue' means that which is left after something has been taken away. The only thing which the testator has directed to be taken away is the 5,000 rupees. It follows that the residuary legatees get nothing until the 5,000 rupees have been deducted. As Jessel M.R. said in *Gainsford v. Dunn*[1],

> "Those cases were cases of a gift of residue of real and personal estate, but the result of the cases is this: that where you find a legacy followed by a gift of the residue of real and personal estate, the word 'residue' is considered to mean that out of which something given before has been taken."

Mr. Goho put forward an ingenious argument that the later reference to the houses in Victoria Street and to the house and land in Karikal, made these devises specific, and that accordingly the legacy was not charged upon them, but the mere fact that a testator enumerates some specific things in a gift of residue does not make the gift of those things specific (See *Jarman 8th Ed. p. 1003* and the cases there referred to), and Mr. Goho admitted that, if the gifts were not specific, the principle of *Geville v. Brown*[2], would apply, and the legacy would be charged on the residue. In this connection effect must also be given to the word 'consequently' which precedes the so-called specific gift and follows immediately after the residuary gift, thereby indicating that the gift of the Singapore property was to the beneficiaries in their character as residuary legatees, which again leads to the inference that the gift was subject to the pecuniary legacy of 5,000 rupees.

It was sought at the very last moment to put in an affidavit to show that the estate in India was very small. The practice of raising controversial questions of fact upon an adjourned summons is certainly to be discouraged, especially where the summons has been pending for months without any of the facts alleged in the affidavit in support of the summons being disputed. In my view, however, the extent of the Indian estate is quite irrelevant to the matter now before the Court.

There will be a declaration that the estate of the testator in Singapore is charged with the payment of the legacy of 5,000 rupees. The costs of the affidavit of the 13th January, 1940, must be disallowed in the case of Pattoumalle. Subject thereto the costs of all parties will be taxed as between solicitor and client and paid out of the estate of the deceased.

Order accordingly.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.